

1 Gena L. Sluga, SBN 9910
Martin J. Kravitz SBN 83
2 Tyler J. Watson SBN 11735
Christian, Kravitz, Dichter, Johnson & Sluga, PLLC
3 8985 Eastern Avenue, Suite 200
Las Vegas, Nevada 89123
4 gsluga@cdslawfirm.com
mkravitz@ksjattorneys.com
5 tjwatson@ksjattorneys.com
Attorney for RSUI Indemnity Company
6

7 **UNITED STATES DISTRICT COURT**

8 **DISTRICT OF NEVADA**

9 RSUI INDEMNITY COMPANY, a New
Hampshire Stock Company; and EVANSTON
10 INSURANCE COMPANY, an Illinois
corporation;

11 Plaintiffs,

12 vs.

13 SPORTSMAN'S ROYAL MANOR, LLC, a
Nevada Limited Liability Company;
14 DOMONIQUE BROWNING-PALMER,
individually; GARY BRENNAN, individually,

15 Defendants.

16 SPORTSMAN'S ROYAL MANOR, LLC;
GARY BRENNAN

17 Counter-claimants,

18 vs.

19 RSUI INDEMNITY COMPANY;
EVANSTON
20 INSURANCE COMPANY; KAERCHER
CAMPBELL & ASSOCIATES INSURANCE
21 BROKERAGE OF NEVADA, LLC;
KAERCHER INSURANCE, AN ALERA
22 GROUP AGENCY, LLC; and DOE
DEFENDANTS 1-10; ROE DEFENDANTS
23 11-20;

24 Counter-defendants.

Case No.: 2:20-cv-01484-RFB-VCF

**ORDER GRANTING RSUI INDEMNITY
COMPANY AND EVANSTON
INSURANCE COMPANY'S
EMERGENCY JOINT MOTION FOR
GOOD FAITH SETTLEMENT [ECF NO.
100]**

25 Plaintiff/Counter-Defendant, RSUI INDEMNITY COMPANY, by and through its counsel
26 of record, CHRISTIAN, KRAVITZ, DICHTER, JOHNSON & SLUGA, PLLC, and
27 Plaintiff/Counter-Defendant, EVANSTON INSURANCE COMPANY, by and through its counsel
28 of record, CLYDE & CO US, LLP, Emergency Joint Motion for Good Faith Settlement having

1 been heard on the 22nd day of August, 2022, before the Honorable Magistrate Judge Cam
 2 Ferenbach: Michelle D. Alarie, Esq. appearing on behalf of Sportsman's Royal Manor
 3 ("Sportsman's") and Gary Brennan, Tyler J. Watson, Esq. appearing on behalf of RSUI Indemnity
 4 Company ("RSUI"), Peter J. Whalen, Esq. appearing on behalf of Evanston Insurance Company
 5 ("Evanston"), Matthew L. Sharp, Esq. appearing on behalf of Domonique Browning-Palmer
 6 ("Browning-Palmer"), and Amanda Ebert, Esq. appearing on behalf of Kaercher Campbell &
 7 Associates Insurance Brokerage of Nevada, LLC and Kaercher Insurance ("Kaercher"), the Court
 8 having heard oral arguments and having been fully advised in this matter and good cause appearing
 9 therefore, makes the following Findings of Fact, Conclusions of Law, and Order:

10 **I. FINDINGS OF FACT**

11 1. On July 28, 2022, RSUI and Evanston filed their Emergency Joint Motion for Good
 12 Faith Settlement ("Motion").

13 2. On August 1, 2022, Sportsman's and Gary Brennan filed a Non-Opposition to the
 14 Motion.

15 3. On August 4, 2022, Defendant Browning-Palmer filed a Non-Opposition to the
 16 Motion.

17 4. On August 4, 2022, Kaercher filed a Response to the Motion.

18 5. On August 5, 2022, RSUI and Evanston filed their Reply in Support of the Motion.

19 6. On August 8, 2022, the Parties appeared for the hearing on the Motion and, at the
 20 request of Kaercher, the hearing was continued to August 22, 2022 to afford Kaercher additional
 21 time to determine whether to oppose the Motion on a substantive basis.

22 7. On August 18, 2022, Kaercher filed a notice withdrawing their Response and a
 23 Notice of Non-Opposition.

24 8. Notwithstanding the lack of opposition, this Court applied the following factors as
 25 enumerated in *The Doctor's Co. v. Vincent*, 120 Nev. 644, 651-52, 98 P.3d 681, 686 (2004)(*quoting*
 26 *In re MGM Grand Fire Litigation*, 570 F. Supp. 913, 927 (D. Nev. 1983)), to the present case to
 27 determine whether Plaintiffs/Counter-Defendants RSUI and Evanston's settlement agreement was
 28 made in good faith: (1) the amount paid in the settlement; (2) the allocation of the settlement

1 proceeds amongst the Plaintiffs; (3) the insurance policy limits of settling Defendants; (4) the
2 financial condition of the settling Defendants; and (5) the existence of collusion, fraud or tortious
3 conduct aimed to injure the interests of non-settling Defendants.

4 9. The Court finds that the first factor, the amount paid in settlement, favors a finding
5 of good faith settlement. RSUI will contribute \$262,500 and Evanston will contribute \$25,000 to
6 Sportsman's to assist it in efforts to resolve Browning-Palmer's pending claims against Sportsman's
7 in Nevada's Eighth Judicial District Court. Given the arguments that neither RSUI nor Evanston
8 owe any coverage in the *Browning-Palmer* action, the settlement figures are more than reasonable.
9 As set forth in the Joint Motion, pursuant to the James River Assault and Battery Endorsement,
10 Sportsman's primary carrier, the limit of the James River Policy is reduced from \$1,000,000 per
11 "occurrence" to \$50,000 per "occurrence" for all "claims expenses" and damages because of "bodily
12 injury" asserted in the *Browning-Palmer* action. In other words, the limit available under the James
13 River Policy for the *Browning-Palmer* action is \$50,000, rather than the \$1,000,000 specified in the
14 Schedule of Underlying Insurance of the RSUI Policy for this type of claim. RSUI and Evanston
15 contend that the Schedule of Underlying Insurance makes no mention of self-insurance.
16 Accordingly, RSUI maintains that the "Sublimited Underlying Coverage" exclusion in the RSUI
17 Policy applies and bars coverage for this matter. As the Evanston Policy generally follows form to
18 the underlying RSUI excess Policy, Evanston maintains that the Evanston Policy also provides no
19 coverage for the Browning-Palmer claim.

20 10. The Court finds that the second factor, the allocation of settlement proceeds, favors
21 a finding of good faith settlement. As this settlement relates to resolving the counterclaims
22 Sportsman's asserted against RSUI and Evanston (as well as rendering RSUI and Evanston's claims
23 moot), the question of allocation is not at issue for the purposes of this settlement.

24 11. The Court finds that the third factor, the insurance policy limits of the settling parties
25 favor a finding of good faith settlement. Because the settling parties are insurance companies, as
26 opposed to individuals or entities holding an insurance policy, this factor is inapplicable.

27 12. The Court finds that the fourth factor, the financial condition of the settlement
28 Defendant, favors a finding of good faith settlement. As the settling parties are insurance companies,

1 as opposed to individuals or other entities, the question of financial condition is inapplicable.

2 13. The Court finds that the fifth factor, the existence of collusion, fraud, or tortious
3 conduct aimed to injure the interests of the non-settling Defendant, favors a finding of good faith
4 settlement. The purpose of this settlement is for RSUI and Evanston to buy their peace before
5 incurring significant time and expense regarding expert witness retention, conducting depositions,
6 drafting of discovery and dispositive motions, and preparing for and conducting a trial on the merits.
7 Moreover, despite strong arguments that RSUI and Evanston's excess policies do not provide any
8 coverage for the subject *Browning-Palmer* litigation, this settlement allows RSUI and Evanston to
9 protect the insured from further exposure. Lastly, the parties utilized the services of a mediator, the
10 Hon. Jennifer Togliatti (Ret.) which serves as further proof that no collusion, fraud, or tortious
11 conduct occurred between the parties in reaching this agreement.

12 14. The Court finds that an application of the five articulated factors to this case
13 establishes that RSUI and Evanston's settlement was made in good faith.

14 15. The Court further finds that RSUI and Evanston are discharged from any and all
15 potential liability for any contribution or equitable indemnity claims including, but not limited to, any
16 potential, but not yet asserted, claim from Kaercher.

17 **II. CONCLUSIONS OF LAW**

18 1. In Nevada, courts have discretion as to the determination of good faith based upon
19 all relevant facts available. *Veliscol Chemical Corp. v. Davidson*, 107 Nev. 356, 360, 811 P. 2d 561
20 (1991).

21 2. Under Nevada law, courts consider the following factors in determining whether a
22 settlement was reached in good faith: (1) the amount paid in settlement; (2) the allocation of the
23 settlement proceeds amongst the Plaintiffs; (3) the insurance policy limits of settling Defendants;
24 (4) the financial condition of the settling Defendants; and (5) the existence of collusion, fraud or
25 tortious conduct aimed to injure the interests of non-settling Defendants. *The Doctor's Co. v.*
26 *Vincent*, 120 Nev. 644, 651-52, 98 P.3d 681, 686 (2004)(quoting *In re MGM Grand Fire Litigation*,
27 570 F. Supp. 913, 927 (D. Nev. 1983)).

28 3. Plaintiffs/Counter-Defendants RSUI and Evanston demonstrated the settlement

reached was made in good faith pursuant to the five factors set forth in *The Doctor's Co. v. Vincent*.

III. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND AGREED that Plaintiffs/Counter-Defendants RSUI and Evanston's Joint Emergency Motion for Good Faith Settlement is hereby **GRANTED**.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND AGREED that the granting of Plaintiffs/Counter-Defendants RSUI and Evanston's Joint Emergency Motion for Good Faith Settlement precludes any non-settling party from bringing any potential claim for equitable indemnity and/or contribution in the future.

U.S. DISTRICT COURT JUDGE

Respectfully Submitted By:

CHRISTIAN, KRAVITZ, DICHTER,
JOHNSON & SLUGA, PLLC
/s/ Tyler J. Watson, Esq.
Gena L. Sluga
Martin J. Kravitz
Tyler J. Watson
8985 Eastern Avenue, Suite 200
Las Vegas, Nevada 89123
Attorney for RSUI Indemnity Company

CLYDE & Co, US, LLP
/s/ Peter J. Whalen, Esq.
Peter J. Whalen
Jennifer D. McKee
3960 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
Attorneys for Evanston Insurance Company

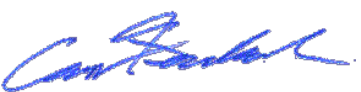
Approved to as to Form and Content:

ARMSTRONG TEASDALE, LLP
/s/ Michelle D. Alarie, Esq.
Kevin R. Stolworthy, Esq.
Michelle D. Alarie, Esq.
3770 Howard Hughes Parkway, Suite 200
Las Vegas, NV 89169
*Attorneys for Plaintiffs/Counter-claimants
Sportsman's Royal Manor, LLC and
Gary Brennan*

LIPSON NEILSON, P.C.
/s/ Amanda A. Ebert, Esq.
Joseph P. Garin, Esq.
Amanda A. Ebert, Esq.
9900 Covington Cross Dr. Suite 120
Las Vegas, NV 89144
*Attorneys for Counterdefendants, Kaercher
Campbell & Associates Insurance Brokerage
Of Nevada, LLC and Kaercher Insurance,
An Alera Group Agency, LLC*

MATTHEW L. SHARP, LTD.
/s/ Matthew L. Sharp, Esq.
Matthew L. Sharp, Esq.
432 Ridge St.
Reno, NV 89509
*Attorney for Defendant Domonique
Browning-Palmer*

IT IS SO ORDERED.



Cam Ferenbach
United States Magistrate Judge

DATED 8-26-2022